

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Patrick Y. Lu et al.
Application No. : 10/551,667
Confirmation No. : 5623
Filed : July 18, 2006
For : TARGETS FOR TUMOR GROWTH INHIBITION
Group Art Unit : 1635
Examiner : Tracy Ann Vivlemore

New York, New York
December 30, 2009

Mail Stop Petition
Re: Patent Term Adjustment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PETITION RE: PATENT TERM ADJUSTMENT

Sir:

This responds to the Determination of Patent Term Adjustment Under 35 U.S.C. § 154(b) (“PTA Determination” hereinafter), mailed with the October 1, 2009 Notice of Allowance. The PTA Determination sets forth a patent term adjustment of 0 days. According to the Patent and Trademark Office’s Patent Application Information Retrieval system (PAIR), this patent term adjustment results from PTO delay of 1 day, minus applicant delays of 217 days. In reviewing the PTA Determination, applicants have noted two errors in the calculation of applicant delay under 35 U.S.C. § 154(b)(2)(C). These errors lead to a calculation of applicant

delay that is lower than it should be. To fulfill their duty of candor and good faith, applicants request reconsideration of the patent term adjustment.

Because the Notice of Allowance was mailed on October 1, 2009 and the Issue Fee is submitted concurrently herewith, this Petition is timely filed.

USPTO delay under 35 U.S.C. § 154(b)(1)(A)

The subject application fulfilled the requirements of 35 U.S.C. § 371 on July 18, 2006 and the first notification under 35 U.S.C. § 132 was not mailed until September 19, 2007. The late mailing of the first § 132 notification delays issuance of a patent from the subject patent application by 1 day. 35 U.S.C. § 154(b)(1)(A)(i).

Applicant delay under 35 U.S.C. § 154(b)(2)(C)

According to PAIR, the total period of applicant delays under 37 C.F.R. § 1.704(c) is 217 days, as shown in the table below:

Period No.	Dates Used by PAIR in Calculation of Alleged Applicant Delay	Days of Alleged Applicant Delay
1	Applicants filed a Response to the September 19, 2007 Restriction Requirement on <u>January 22, 2008</u> .	34
2	Applicants allegedly filed a Response to the April 29, 2008 Office Action on <u>October 28, 2008</u> .	91
3	Applicants filed a Response to the February 19, 2009 Office Action on <u>August 19, 2009</u> .	92
Total:		217

Applicants note that the October 28, 2008 date of the Response to the April 29, 2008 Office Action used by PAIR in the calculation of alleged applicant delay is incorrect. This Response was filed via the "Express Mail Post Office to Addressee" service of the United States

Postal Service on October 29, 2008. The correct October 29, 2008 Mail Room Date is indicated in the “Image File Wrapper” tab of PAIR. Accordingly, the reduction from Period 2 should be 92 days.

Applicants further note that they filed a Supplemental IDS on April 16, 2008. Assuming that this IDS is considered a supplemental paper under 37 C.F.R. § 1.704(c)(8) after the filing of the January 22, 2008 Response, applicants believe that the filing of this IDS would result in an additional 85 days of applicant delay.

Applicants believe thus that the period of applicant delay under 37 C.F.R. § 1.704(c) should total 303 days. Because the USPTO delay under 35 U.S.C. § 154(b)(1)(A) is 1 day, this correction of the period of applicant delay will not change the patent term adjustment of 0 days. However, applicants wish to correct the record in advance of the calculation of patent term adjustment that will take place upon issuance of the patent.

No fee is believed to be due in connection with this Petition. However, the Director is hereby authorized to charge payment of any fee required, or credit any overpayment in connection with this Petition, to Deposit Account No. 06-1075, Order No. 104825-0017-101.

Respectfully submitted,

/Alla Brukman/

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